

EXHIBIT V

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FILED

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
SAN ANTONIO DIVISION**

APR 20 2011

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY CLERK

KEITH SMITH,
Plaintiff,

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v.

CAUSE NO. SA-09-CA-296-OG

GENERAL MOTORS CORPORATION, and
DELPHI AUTOMOTIVE SYSTEMS, LLC,
Defendants.

ORDER

Defendant Delphi moves to dismiss plaintiff's case against it. The motion will be denied. First, despite knowing of plaintiff's suit, Delphi concedes that it did not mail him notice of either the initial or final administrative claims bar dates. Notice by publication does not suffice when the claimant is known. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 318 (1950). Second, plaintiff's products liability cause of action is not an "administrative claim" as defined by the bankruptcy court's order—it is neither a claim for payment of an administrative expense under § 503(b) of the Bankruptcy Code nor a claim entitled to priority pursuant to § 507(a)(1) of the Code.

Delphi's motion to dismiss (docket no. 26) is DENIED.

SIGNED this 20 day of April, 2011.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE